

IN THE UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF TEXAS
BEAUMONT DIVISION

IN RE:

TRACEY J. FIRMIN xxx-xx-6456
REBECCA A. FIRMIN xxx-xx-7375
311 W. DREW
KIRBYVILLE, TX 75956

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* Case No. 17-10091
* Chapter 13
*

Debtors

TRUSTEE'S RESPONSE TO DEBTOR(S)' MOTION TO MODIFY

x Objection by Trustee.
 Comment by Trustee.

ATTORNEY FOR DEBTOR(S): STEVEN S. PACKARD
TRUSTEE: John J. Talton
BASED UPON MODIFICATION FILED ON: 3/29/18

I. Budget Information:

| | | |
|----|-------------------|------------|
| A. | Monthly Income | \$10388.60 |
| B. | Monthly Expenses | \$4128.06 |
| C. | Difference | \$6260.54 |
| D. | Date Budget Filed | 3/29/18 |

II Analysis of Modification:

A. Due Date for first payment: 3/11/2017

B. Status of Plan Payments under Modification:

x 1. Debtor is current under Modification
 2. Debtor is delinquent under the Modification in the amount of
\$ _____ as of _____ with the next plan payment being due on
_____.

C. Last payment received from Debtor posted by Trustee: 4/16/2018

D. Date of last confirmed Plan: 5/16/2017

E. Attorney's Fee Disclosure:

 1. Amended or Supplemental 2016b Attorney Compensation Statement
filed requesting fee for the Modification in the amount of: \$ _____.

¹ The use of the singular term "Debtor" in this Trustee's Confirmation Report includes both debtors when the case has been initiated by the filing of a joint petition by spouses.

2. No Amended or Supplemental 2016b Attorney Compensation Statement has been filed.

F. Purpose of Motion to Modify:

- To reconcile the Plan with allowed claims pursuant to the TRCC;
- To increase the amount of payments required under the Plan;
- To reduce the amount of payments required under the Plan;
- To provide for an allowed claim omitted from treatment under the Plan;
- To extend the time for making payments required under the Plan;
- To reduce the time for making payments required under the Plan;
- To surrender collateral pursuant to Section 3.6;
- To cease further plan disbursements to a particular claimant;
- To cure a delinquency in the plan payments caused by _____;
- To increase the amount of retained income tax refunds authorized under Section 2.4 for following reason: _____;
- To seek approval of an additional award of attorney's fees to the Debtor's attorney;
- Other: _____;
- To add a nonstandard provision to Part 8 of the Plan.

III. Monthly plan payments to be made under the Motion to Modify:

| Amount | Number of Payments | Total to be Paid |
|--------|--------------------|------------------|
| \$3947 | 2 | \$7894 |
| \$3950 | 1 | \$3950 |
| \$4050 | 57 | \$230850 |

IV. Total Plan Base and Amount available to Creditors:

| | |
|---|--------------|
| Total Plan Base under Modification | \$242,694 |
| Less Trustee Fees | \$24,269.40 |
| Net Amount to Creditors | \$218,424.60 |

V. Claims being paid by Trustee pursuant to the previous Confirmation Order/Modification Order and the proposed changes in this Motion to Modify:

| Creditor | Plan Section Modified | Previous Principal | Change Per Modification | Int. Rate | Monthly Payment | Estimated Total Paid |
|---|-----------------------|--------------------|-------------------------|-----------|-----------------|----------------------|
| STEVEN S. PACKARD LAPRAY 1240 ORLEANS STBEAUMONT, TX 77701 | n/a | \$3387 | n/a | 0% | Pro-Rata | \$3,387 |
| STEVEN S. PACKARD | n/a | \$500 | n/a | 0% | Pro-Rata | \$500 |

| | | | | | | |
|--|-----|------------|------------|-----------|----------|-------------|
| LAPRAY 1240 ORLEANS STBEAUMONT, TX 77701 | | Stay work | | | | |
| JASPER COUNTY P O DRAWER 1970 JASPER, TX 75951 | n/a | \$1311.49 | n/a | 12% | \$137.73 | \$1,357.15 |
| HARLEY-DAVIDSON CREDIT CORP. BOX 15129 PALATINE, IL 60055 | 3.4 | \$5,465.62 | n/a | 5% | \$205.15 | \$5,805.55 |
| MODEL FINANCE CO.C O CAPITAL RECOVERY GROUP BIN# 920074, PO BOX 29425PHOENIX, AZ 85038 | 3.4 | \$1193.51 | n/a | 5% | \$43.73 | \$1,269.64 |
| REGIONAL ACCEPTANCE CORPORATIONBANKR UPTCY SECTION/ 100- 50-01-51 PO BOX 1847WILSON, NC 27894 | 3.4 | \$10437.50 | \$19744.34 | 5% | \$595.19 | \$21,426.96 |
| SKOPOS FINANCIAL LLC P.O. BOX 1640 COPPELL, TX 75019 | 3.4 | \$9900 | \$24453.95 | 5% | \$739.82 | \$26,633.52 |
| MARTIN MOTORS 5110 COLLEGE ST. BEAUMONT, TX 77707 | n/a | \$17068 | n/a | 5% | \$643.18 | \$18,125.15 |
| MARTIN MOTORS 5110 COLLEGE ST. BEAUMONT, TX 77707 | n/a | \$14029 | n/a | 5% | \$528.66 | \$14,897.92 |
| MARTIN MOTORS 5110 COLLEGE ST. BEAUMONT, TX 77707 | n/a | \$2084.38 | n/a | 5% | \$78.55 | \$2,213.48 |
| AARON SALES & LEASE1015 COBB PLACE BOULEVARD ATLANTA, GA 30156 | n/a | \$200 | n/a | 5% | \$13.16 | \$207.04 |
| RGM RENTALS, LLC PO BOX 1840 CENTER, TX 75935 | n/a | \$2160.16 | n/a | 5% | \$81.41 | \$2,293.94 |
| FIRST NATIONAL BANK OF AMERICAP.O. BOX 980 EAST LANSING, MI 48826 | n/a | \$27070.92 | n/a | 5.75 % | \$911.43 | \$29,272 |

VI. New claims being paid by Trustee pursuant to pending Modification that was not otherwise provided for in previous Confirmation Order:

| Creditor | Added to Plan Section | New Principal | Int. Rate | Monthly Payment | Estimated Total Paid |
|----------|-----------------------|---------------|-----------|-----------------|----------------------|
| | | | | | |

VII. Projected Amount to Unsecured Creditors and percentage to be paid:

| | |
|---|----------------------------------|
| Projected Amount to Unsecured Creditors | \$91,035.25 |
| Total Unsecured Creditors (less priority) | \$88,377.05 x 5%=\$100,067.04 |
| Projected Dividend to Unsecured Creditors | 91% |

VIII. The Trustee makes the following recommendations concerning the Modification:

The Modification should be approved.

Trustee objects to the proposed Modifications for the following reason(s):

1. Term of the modification is less than the Applicable Commitment Period.

2. Debtor has insufficient disposable income to fund the proposed modifications for the following reason(s):

Per budget.

Unemployment income and/or other income as listed on Schedule I will or has ended.

Inability to live within budget and make post-petition mortgage payments (or other direct payments) and/or plan payments under previous Confirmation Order.

Other:

3. Debtor has failed to dedicate all of their projected disposable income to be received in the applicable commitment period for the following reason(s):

Per budget.

Term of plan is less than the Applicable Commitment Period and such fails to provide for payment in full of all of the unsecured creditors, including interest.

Failed to dedicate tax refunds. **Need her 2016 tax return and any refund that may be due and 2017 tax return for both and any refund that may be due.**

Failed to dedicate income from new job and/or other sources that are not otherwise disclosed.

Other:

4. Debtor has not filed an amended budget pursuant to the Court's Local Rules which prevents a determination of whether Debtor will be able to make all of the plan payments under the Modification.

x 5. Debtor has not provided new pay advices or other evidence of current income which prevents the Trustee from confirming the amount of the Debtor's current income.

 6. Debtor has failed to file with the Court proper certification that all post-petition payments are being made direct by the Debtor as provided for in the confirmed Plan as modified in the Motion to Modify.

x 7. Modification appears to be underfunded. **To pay 100% plus 5% to unsecured creditors.**

 8. Modification fails to provide for or fully provide for the priority claim(s) and/or proposes to overpay the priority claim(s) of the following claimants:

x 9. Modification fails to provide for or fully provide for the secured claim(s) and/or proposes to overpay the secured claim(s) of the following claimants: **Jasper Co. has been paid in full plus interest.**

 10. Modification proposes to pay the following claimant(s) that do not otherwise hold an allowed claim filed in this case:

x 11. Modification proposes to continue to pay the following claimant(s) where previous disbursements made to said claimant(s) have been returned to the Trustee for the reason as stated: **Model Finance co.—refused, unable to forward.**

 12. Modification proposes to pay interest to the following unsecured claim(s) and/or unsecured portions of secured claims which discriminates against other unsecured creditors:

 13. Debtor is not current on the Debtor's plan payments under the terms of the proposed Modification.

 14. Modification appears to be infeasible in that the Debtor has a poor payment record with no indication how the Debtor will be able to make future payments under the Modification.

x 15. Attorney's fees require approval by the Court. **Attorney is requesting fees for stay litigation work, however, there is no fee certification on file.**

x 16. Other: **1.) Modification fails to specify how plan payments are to be made.**

2.) Motion indicates the following claims are being modified, however there appears to be no change in the claim's treatment: Harley Davidson Financial and Model Finance Co.

Respectfully submitted,

JOHN J. TALTON
CHAPTER 13 TRUSTEE

/s/ John J. Talton
John J. Talton, SBN 19629700
Lloyd T. Kraus, SBN 24066773
110 N. College #1200
Tyler, Texas 75702
(903) 593-7777, Fax (903) 597-1313

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the above and foregoing document has been served upon the following parties in interest by mailing a copy of same to them via first class mail or electronically on 4/23/18:

STEVEN S. PACKARD
PACKARD LAPRAY
1240 ORLEANS ST
BEAUMONT, TX 77701

TRACEY J. FIRMIN
REBECCA A. FIRMIN
311 W. DREW
KIRBYVILLE, TX 75956

/s/John J. Talton
John J. Talton